

LITIGATION ROSTER

SALES AND USE TAX

APRIL 2013

**Sales and Use Tax
APRIL 2013**

NEW CASES

<u>Case Name</u>	<u>Court/Case Number</u>
LIVINGSTON, CITY OF	Sacramento County Superior Court Case No. 34-2013-80001460
PALM SPRINGS, CITY OF	Sacramento County Superior Court Case No. 34-2013-80001440
SAN DIEGO, CITY OF	Sacramento County Superior Court Case No. 34-2013-80001454
TRIANGLE FOODS, INC. III	Los Angeles County Superior Court Pending

CLOSED CASES

<u>Case Name</u>	<u>Court/Case Number</u>
TRIANGLE FOODS II	Los Angeles Superior Court Case No. BS139220
WATSONVILLE, CITY OF	Sacramento County Superior Court Case No. 34-2013-80001414

Please refer to the case roster for more detail regarding new and closed cases

SALES AND USE TAX

LITIGATION ROSTER

APRIL 2013

ALAMEDA, CITY OF, et al. v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509234

Court of Appeal, First Appellate District Case No. A137186

Plaintiff's Counsel

Charles Coleman

Holland & Knight, LP

Filed –04/21/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Alameda as being subject to use tax is valid.

Audit/Tax Period: 1995 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Trial began on October 17, 2011, and was continued to November 1, 2011. The trial commenced on October 17, 2011 and is still on-going. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. The BOE had until November 20, 2012, to determine whether to appeal the decision. BOE filed its Notice of Appeal on November 16, 2012. A hearing on Petitioner's November 13, 2012 Motion for Attorney Fees, has been continued to February 5, 2013. After oral argument, court continued the matter to March 6, 2013 for further argument. Hearing has been continued to May 22, 2013.

Court of Appeal: BOE's opening briefs are due to be filed on or before April 2, 2013. A hearing is scheduled for June 6, 2013.

ALHAMBRA, CITY OF, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BS124978

Court of Appeal, Second Appellate District No. B232833

Plaintiff's Counsel

Richard R. Terzian, Mark J. Mulkerin

Burke, Williams & Sorensen, LLP

Filed – 02/19/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. The case is currently being briefed in the Court of Appeal.

Court of Appeal: Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding City of Pomona's local tax appeal. A Status Conference was held on August 29, 2012. The Supreme Court denied City of Pomona's request to depublish the decision of the Court of Appeal on September 19, 2012. Appellate Court officially dismissed the case seeking depublishing of its opinion on October 24, 2012. The case has returned to the trial court.

Trial Court: Case has been reassigned to a different judge. Status Conference hearing is scheduled for August 13, 2013.

BELLFLOWER, CITY OF, et al. v. State of California

Sacramento Superior Court Case No. 34-2012-80001269

Plaintiff's Counsel

Michael G. Colantuono
Colantuono & Levin

Filed -09/19/12

BOE's Counsel

Kathleen Lynch
BOE Attorney
John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. BOE filed its response on October 25, 2012. On November 9, 2012, the Court denied a notice by Respondents/Defendants to re-assign this case with League of California Cities, et al., under a single judge. The court agreed there are common legal issues but each have their own unique claims and questions of law and fact. Petitioners and Defendants have agreed to a schedule for filing briefs not later than August 9, 2013. The hearing is scheduled for September 20, 2013.

BRISBANE, CITY OF v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509232

Court of Appeal, First Appellate District: A137185

Plaintiff's Counsel

Charles Coleman
Holland & Knight, LP

Filed -04/21/09

BOE's Counsel

Kris Whitten
BOE Attorney
John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Brisbane as being subject to use tax is valid. The trial commenced on November 1, 2011, and was continued to December 8, 2011.

Audit/Tax Period: 2001 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. The trial commenced on October 17, 2011 and is still on-going. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. The Board has until November 20, 2012, to determine whether to appeal the decision. The BOE had until November 20, 2012, to determine whether to appeal the decision. BOE filed its Notice of Appeal on November 16, 2012. A hearing on Petitioner's November 15, 2012 Motion for Attorney Fees, has been continued to February 5, 2013. After oral argument, court continued the matter from March 6, 2013 to May 22, 2013, for further argument.

Court of Appeal: BOE's Opening Briefs and the Joint Appendix are due to be filed on or before April 2, 2013. A hearing is scheduled for June 6, 2013.

DANSIG, INC. v. CA State Board of Equalization and Does 1 through 50

Sacramento Superior Court Case No. 34-2012-00134800

Plaintiff's Counsel
Steven E. Paganetti
Wild, Carter & Tipton

Filed –11/2/2012
BOE's Counsel
Steven J. Green
BOE Attorney
Kiren Chohan

Issue(s): The issue in this case is whether Plaintiff is entitled to a refund of sales tax paid ([Rev. & Tax. Code sections 6051, 6091](#)), ([Rev. & Tax. Code section 6561](#)) and ([Rev. & Tax. Code section 6902](#)).

Audit/Tax Period: None

Amount: \$70,304.48

Status: BOE's response, due by April 19, 2013, was filed on April 16, 2013.

D.R. SYSTEMS, INC. v. State of California; State Board of Equalization

San Diego County Superior Court Case No. 37-2009-00094087

Court of Appeal, Fourth Appellate District: D060856

Plaintiff's Counsel
Scott Savary
Savary, APC

Filed –
BOE's Counsel
Leslie Branman Smith
BOE Attorney
Renee Carter

Issue(s): Did plaintiff file a timely Claim for Refund for self-help credits subsequently disallowed during an audit by the BOE's Sales & Use Tax Department?

Audit/Tax Period: 04/01/02 – 12/31/05

Amount: \$283,410.00

Status: In the court's Minute Order dated May 24, 2011, BOE's Motion for Summary Judgment was granted. Plaintiff's motion for reconsideration of the court's ruling denying the plaintiff's motion for summary judgment was denied on September 9, 2011. Plaintiff filed a Notice of Appeal on November 2, 2011, and BOE filed its Objection to Notice of Appeal on November 3, 2011, citing that the Plaintiff's time to file a notice of appeal lapsed on September 6, 2011.

Court of Appeal: On December 23, 2011, the Court of Appeal accepted the Plaintiff's Notice of Appeal upon its filing the Judgment. The case is fully briefed in the Court of Appeal. Oral arguments, set for

February 11, 2013, were heard and submitted to the Court. On March 7, 2013 the Court of Appeal reversed the trial court judgment and ruled that the parties shall bear their own costs on appeal.

HUNTINGTON BEACH, CITY OF, et al. v. CA Director of Finance

Sacramento Superior Court Case No. 34-2013-80001441

Filed –03/15/2013

BOE's Counsel

Plaintiff's Counsel

Murray O. Kane

Kane, Ballmer & Berkman

BOE Attorney

John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's response was filed on April 17, 2013.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Filed – 06/13/05

BOE's Counsel

Steven J. Green

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

BOE Attorney

Jeffrey Graybill

Issue(s): Whether plaintiff can exempt from tax its charges for special printing aids ([Regulation 1541](#)).

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

IRVINE, CITY OF v. California State Board of Equalization

San Francisco Superior Court Case No. CPF-11-511586

Filed – 9/19/11

BOE's Counsel

Kris Whitten

Plaintiff's Counsel

Charles L. Colman III

Holland & Knight

BOE Attorneys

John Waid/Kiren Chohan

Issue(s): Whether BOE has violated the [Bradley-Burns Uniform Local Tax Law](#), wherein BOE purportedly improperly distributed local sales tax revenues from transactions involving sales negotiated in the City of Irvine and fulfilled by shipment of merchandise from out of state. This case is held in abeyance by trial court pending rulings in the Alameda, Brisbane, and South San Francisco cases.

Audit/Tax Period: None

Amount: Unspecified

Status: On September 19, 2011, Plaintiff filed a Petition for Writ of Mandate and Complaint. BOE filed its Answer in response on November 2, 2011.

ISTRIN, JONATHAN v. Ralphs Grocery Company, California State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

San Francisco Superior Court Case No. CPF-09-509234

Filed – 03/20/09

BOE's Counsel

Elisa Wolfe-Donato

BOE Attorney

John Waid

Plaintiff's Counsel

Jordan L. Lurie, Joel E. Elkins

Weiss & Lurie

Issue(s): Plaintiff contends that Ralphs improperly collected sales tax reimbursement on sales of hot coffee to go. Plaintiff seeks an injunction against Ralphs. Plaintiff also seeks an order that Ralphs institute a system to accurately track tax on sales of hot coffee to go and to make refund applications to BOE, and an injunction ordering BOE to act on Ralphs' refund applications and to deposit moneys already collected with the court. BOE contends that the court lacks jurisdiction of this case because plaintiff lacks standing to bring a suit to adjudicate a sales tax dispute. Plaintiff may not use remedies not authorized by the Legislature.

Audit/Tax Period: NoneAmount: Unspecified

Status: First Amended Complaint was served on all parties on March 15, 2010. The parties negotiated a stay of proceedings pending the results in *Loeffler*, and the Stipulation was filed on June 2, 2010.

LANCASTER, CITY OF, et al. v. State of California

Sacramento Superior Court Case No. 34-2012-80001348

Filed –12/21/12

BOE's Counsel

Ryan Marcroft

BOE Attorney

John Waid

Plaintiff's Counsel

Christina J. DeVries

Enterprise Counsel Group, ALC

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: NoneAmount: Unspecified

Status: The BOE is a “remedial defendant” in this case. BOE filed its response on February 11, 2013.

LEAGUE OF CALIFORNIA CITIES, et al. v. Ana Matosantos

Sacramento Superior Court Case No. 34-2012-80001275

Filed –09/27/12

BOE's Counsel

Kathleen Lynch

BOE Attorney

John Waid

Plaintiff's Counsel

Ann Taylor Schwing

Best Best & Krieger LLP

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: NoneAmount: Unspecified

Status: The BOE is a “remedial defendant” in this case. BOE's response was due and was filed on November 20, 2012. Petitioners file a Petitioners' Memorandum of Points and Authorities in Support of Petition for Writ

of Mandate and Complaint for Injunctive Relief on February 1, 2013. BOE's response was due and was filed on March 12, 2013.

LIVINGSTON, CITY OF, et al. v. Ana Matosantos

Sacramento Superior Court Case No. 34-2013-80001460

Plaintiff's Counsel

Deborah J. Fox

Meyers, Nave, Riback, Silver & Wilson

Filed -4/12/2013

BOE's Counsel

Michael Glen Witmer

BOE Attorney

John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. BOE will file a timely response.

LOEFFLER, KIMBERLY and AZUCENA LEMUS v. TARGET CORPORATION

(*Amicus Curiae Brief*)

California Supreme Court Case No. S173972

Court of Appeal, Second Appellate District, Case No. B199287

Filed - 12/15/2008

BOE's Counsel

None

BOE Attorney

John Waid

Issue(s): This action (between Loeffler and Target to which the BOE was not a party and was not informed of the existence of the litigation) alleges that Target had illegally collected sales tax reimbursement on sale of hot coffee to go. Loeffler sued Target in superior court under the Unfair Competition Law ([UCL-Bus. & Prof. Code, §§ 17200 et seq.](#))

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court dismissed the case on the grounds that there is no private right of action that permits customers to sue retailers in matters relating to sales tax.

Court of Appeal: On December 6, 2008, the court of appeal granted BOE's application to file an amicus brief in support of Target. In a published decision issued May 12, 2009, the Second District Court of Appeal upheld the BOE's position and affirmed the decision of the trial court on all counts.

CA Supreme Court: The court granted BOE's application to file an amicus brief and supplemental brief in support of Respondent Target, filed respectively on April 15, 2010 and July 8, 2011. The court has ordered the parties to submit a letter brief by April 26, 2013, on the issue of primary jurisdiction of the BOE. Supplemental reply briefs and amicus curiae briefs were filed on behalf of Respondents and Petitioners in April 2013 in response to the judges' order regarding primary jurisdiction of the BOE.

LOS ANGELES, CITY OF, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BS124950

Filed – 02/16/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Carmen Trutanich, Pejmon Shemtoob

Office of the Los Angeles City Attorney

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:Amount: Unspecified

Status: The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. The case is currently being briefed in the Court of Appeal.

Court of Appeal: Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding City of Pomona's local tax appeal. A Status Conference was held on August 29, 2012. The Supreme Court denied City of Pomona's request to depublish the decision of the Court of Appeal on September 19, 2012. Appellate Court officially dismissed the case seeking depublishing of its opinion on October 24, 2012. The case has returned to the trial court.

Trial Court: Case has been reassigned to a different judge. Status Conference Hearing is scheduled for August 13, 2013.

LOS BANOS DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001352

Filed – 12/28/2012

BOE's Counsel

Jeff Rich

BOE Attorney

John Waid

Plaintiff's Counsel

John G. McClendon

Leibold McClendon & Mann, P.C.

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: NoneAmount: Unspecified

Status: The BOE is a "remedial defendant" in this case and has an open extension of time to respond to the petition.

LUCENT TECHNOLOGIES, INC. I, et al. v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC402036

Filed – 11/14/08

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Ronald Ito

BOE Attorney

Jeffrey Graybill

Issue(s): (1) Does the sale of software qualify for technology transfer agreement treatment; (2) have the plaintiffs established that the engineering and support charges are related to sales of tangible personal property; and (3) did plaintiffs use the prior agreement to calculate their tax liability for the subject quarter. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 1/1/95 - 12/31/99Amount: \$3,480,913.12

Status: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. Lucent's Answer to BOE's Cross-Complaint for Unpaid Interest was filed February 4, 2011. BOE staff, through the DOJ, has performed a significant amount of discovery, and we have recently been taking depositions of Plaintiffs' witnesses. BOE staff is also working on responding to discovery requests from the Plaintiffs. Cross motions for summary adjudication and/or summary judgment have been filed, and the parties are working on opposition briefs. The hearing date for the cross motions is July 24, 2013. The trial date has been set for August 26, 2013.

LUCENT TECHNOLOGIES, INC. II v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC448715

Filed – 11/02/2010

Plaintiff's Counsel

Jeffrey G. Varga, Julian Decyk

Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Stephen Lew

BOE Attorney

Jeffrey Graybill

Issue(s): Does the sale of software qualify for technology transfer agreement treatment. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 2/1/96 – 9/30/00Amount: \$276,832,998.67

Status: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. The final settlement conference and trial dates were vacated. The court has rescheduled the May 15, 2013, non-jury trial to August 26, 2013. Discovery continues.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**Cross Complaint: Albertson's Inc., et al. v. The California State Board of Equalization**

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch

Akin, Gump, Strauss, Haur & Feld LLP

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waide

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 25, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. Status Conference was rescheduled to May 17, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: CVS, Inc. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel

Richard T. Williams
Holland & Knight LLP

Filed – 01/24/06
BOE's Counsel
Bonnie Holcomb
BOE Attorney
John Waide

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. Status Conference was rescheduled to May 17, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. Status Conference was rescheduled to May 17, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Rite Aid v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles

ReedSmith LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still

pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. Status Conference was rescheduled to May 17, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel

Gail E. Lees, Brian Walters

Gibson, Dunn & Crutcher LLP

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. Status Conference was rescheduled to May 17, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Walgreen Co. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel

Douglas C. Rawles

ReedSmith LLP

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. Status Conference was rescheduled to May 17, 2013.

MENDOTA DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001353

Filed -12/23/12

BOE's Counsel

Jeff Rich

BOE Attorney

John Waid

Plaintiff's Counsel

John G. McClendon

Leibold McClendon & Mann, P.C.

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case and has an open extension of time to respond to the petition.

MERCED DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001351

Filed -12/28/12

BOE's Counsel

Jeff Rich

BOE Attorney

John Waid

Plaintiff's Counsel

John G. McClendon

Leibold McClendon & Mann, P.C.

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a “remedial defendant” in this case and has an open extension of time to respond to the petition.

MOHAN, DIANE, et al. v. Dell, Inc., et al. San Francisco Superior Court Case No. CGC 03-419192 <u>Plaintiffs' Counsel</u> Jason Bergmann Paul, Hastings, Janofsky & Walker, LLP	Filed – 11/01/04 <u>BOE's Counsel</u> Anne Michelle Burr <u>BOE Attorney</u> John Waid
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Issue(s): Whether Dell illegally collected use tax measured by the price of optional service contracts even though the contracts were not separately stated on the invoice ([Revenue and Taxation Code 6011](#); [Regulations 1546 and 1655](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court ruled that the service contracts were in fact optional and that the Dell entities should not have collected tax on their sales. Dell took up a writ of mandate on this issue to the First District Court of Appeal. In a published decision, the appeals court agreed with the trial judge. (*Dell, Inc. v. Sup. Ct.* (2008) 159 Cal.App.4th 911.) Plaintiffs' Unfair Competition Law claims are still pending.

The court continued the Case Management/Settlement Conference to December 9, 2011. On December 12, 2011, the trial court gave preliminary approval to the class action settlement reached by the parties. A Settlement Administrator was retained and will print announcements of the class action settlement which will be mailed to eligible customers with instructions on how claimants can go online to complete their refund claims. Notices were mailed to approximately 3.6 million potential claimants, and claims have started to be filed with the third party settlement administrator. The deadline to opt out of the settlement, and to file objections, was March 19, 2013.

The hearing for final court approval of the settlement was April 18, 2013. The court stated that it would approve the settlement, and the parties are preparing a form of judgment for consideration and entry by the court.

The last day on which claims may be filed is May 29, 2013. The Board does not plan to mail any refunds until after the court's final judgment, and any appeal periods, have passed, which is not expected until after July 1, 2013.

MORGAN HILL ECONOMIC DEVELOPMENT CORPORATION v. Office of the State Controller, John Chiang, et al. Sacramento Superior Court Case No. 34-2012-80001284 <u>Plaintiff's Counsel</u> Iris Yang Best Best & Krieger, LLP	Filed –12/12/12 <u>BOE's Counsel</u> Jane O'Donnell <u>BOE Attorney</u> John Waid
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Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a “remedial defendant” in this case. A timely response will be filed.

NATIONAL CITY, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001198

Filed –07/12/12

BOE’s Counsel

Stephanie Zook

BOE Attorney

John Waid

Plaintiff’s Counsel

Guillermo Frias

Kane, Ballmer & Berkman

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a “remedial defendant” in this case. Plaintiff notified defendants that they will file an amended complaint upon the court’s denial of their Temporary Restraining Order to halt the State from withholding local tax distributions. Plaintiff filed its Amended Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunction on August 30, 2012. BOE filed its response on October 9, 2012. A hearing on Petition for Writ of Mandate is scheduled for September 13, 2013.

PALM SPRINGS, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001440

Filed –4/2/2013

BOE’s Counsel

Jeff Rich

BOE Attorney

John Waid

Plaintiff’s Counsel

Douglas C. Holland

Woodruff, Spradlin & Smart

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE will file a timely response.

PALMDALE, CITY OF, et al. v. State of California, Board of Equalization

Los Angeles Superior Court Case No. BS124919

Filed – 02/16/10

BOE’s Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff’s Counsel

Mitchell E. Abbott, Veronica S. Gunderson

Richards, Watson & Gershon

Issue(s): Whether BOE’s reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute

of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. The case is currently being briefed in the Court of Appeal.

Court of Appeal: Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding City of Pomona's local tax appeal. A Status Conference was held on August 29, 2012. The Supreme Court denied City of Pomona's request to depublish the decision of the Court of Appeal on September 19, 2012. Appellate Court officially dismissed the case seeking depublishing of its opinion on October 24, 2012. The case has returned to the trial court.

Trial Court: Case has been reassigned to a different judge. Status Conference is scheduled for August 13, 2013.

RANCHO CORDOVA, CITY OF v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001356

Plaintiff's Counsel

David W. Skinner

Meyers, Nave, Riback, Silver & Wilson

Filed -12/28/12

BOE's Counsel

Anthony O'Brien

BOE Attorney

John Waide

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. BOE filed its response on February 13, 2013.

REDWOOD CITY, CITY OF v. State of California

Sacramento Superior Court Case No. 34-2012-80001447

Plaintiff's Counsel

Iris Yang

Best & Krieger, LLP

Filed -03/22/13

BOE's Counsel

Jonathan Eisenberg

BOE Attorney

John Waide

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's response was filed on April 25, 2013.

RIVERSIDE, COUNTY OF v. CA Dept. of Finance
Sacramento Superior Court Case No. 34-2012-80001425

Plaintiff's Counsel
Thomas W. Barth
Barth Tozer & Daly LLP

Filed -03/1/13
BOE's Counsel
Michael Glenn Witmer
BOE Attorney
John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's response was filed on April 15, 2013.

SAN BERNARDINO, CITY OF v. John Chiang, State Controller
USBC, Central District, Riverside, Case No. 6:12-BK-28006-MJ

Plaintiff's Counsel
James F. Penman
Attorney for the City of San Bernardino

Filed -03/26/13
BOE's Counsel
None
BOE Attorney
John Waid

Issue(s): Even though this case was filed in bankruptcy court, the dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: A hearing is scheduled for May 30, 2013.

SAN DIEGO, CITY OF v. Ana J. Matosantos, CA Director of Finance
Sacramento Superior Court Case No. 34-2013-80001454

Plaintiff's Counsel
Meghan Ashley Wharton
San Diego Deputy City Attorney

Filed -4/19/2013
BOE's Counsel
Michael Glen Witmer
BOE Attorney
John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiffs' application for Temporary Restraining Order was heard April 25, 2013, and denied from the bench.

SAN LEANDRO, CITY OF (II) v. Patrick J. O’Connell, et al.

Sacramento Superior Court Case No. 34-2013-80001418

Filed –2/26/13

BOE’s Counsel

Jeffrey Rich

BOE Attorney

John Waid

Plaintiff’s Counsel

Deborah J. Fox

Meyers, Nave, Riback, Silver & Wilson

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: An Amended Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief was filed on March 27, 2013. BOE’s response was filed on April 23, 2013.

SANTA MONICA, CITY OF v. CA Director of Finance

Sacramento Superior Court Case No. 34-2013-80001382

Filed –1/31/2013

BOE’s Counsel

Jonathan Eisenberg

BOE Attorney

John Waid

Plaintiff’s Counsel

Marsha Jones Moutrie

Santa Monica City Attorney

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a “remedial defendant” in this case. BOE filed its response on March 14, 2013. All parties stipulated to extend the hearing on Plaintiffs’ Petition for Writ of Administrative Mandate and Complaint for Injunctive Relief from May 24, 2013, to July 19, 2013.

SONOMURA, AKIRA v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL

Filed – 05/30/08

BOE’s Counsel

Leslie Smith

BOE Attorney

John Waid

Plaintiff’s Counsel

Bob Mullen

Attorney at Law

Issue(s): (1) Whether BOE's issuance of a Notice of Determination pursuant to [Revenue and Taxation Code section 6829](#) was proper; and (2) whether BOE’s Notice of Determination was timely ([Revenue and Taxation Code section 6487](#)).

Audit/Tax Period: 04/01/1993 – 03/31/1996 (dual 04/25/2002)

Amount: \$79,000.00

Status: BOE’s Answer was filed July 8, 2008. Plaintiff appears to not be actively pursuing the case at this time.

SOUTH SAN FRANCISCO, CITY OF v. California State Board of Equalization, et al.

San Francisco Superior Court Case No. CPF-09-509231

Court of Appeal, First Appellate District: A137186

Filed – 02/20/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Peter S. Hayes

Meyers, Nave, Roback, Silver & Wilson

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in South San Francisco as being subject to use tax is valid.

Audit/Tax Period: 1996 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Trial began on October 17, 2011 and was continued to November 1, 2011. The trial commenced on October 17, 2011 and is still on-going. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. The BOE had until November 20, 2012, to determine whether to appeal the decision. BOE filed its Notice of Appeal on November 16, 2012. A hearing on Petitioner's November 13, 2012 Motion for Attorney Fees, has been continued to February 5, 2013. After oral argument, court continued the matter from March 6, 2013 to May 22, 2013, for further argument.

Court of Appeal: BOE's Opening Briefs and the Joint Appendix are due to be filed on or before April 2, 2013. A hearing is scheduled for June 6, 2013.

TORRANCE, CITY OF v. California State Board of Equalization, et al.

San Francisco Superior Court Case No. CPF-12-512338

Filed –08/09/12

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Charles Coleman

Holland & Knight

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in the City of Torrance as being subject to use tax is valid.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE filed its response on September 21, 2012.

TRIANGLE FOODS, INC. III

(*Subpoena Duces Tecum*)

Los Angeles Superior Court Case No. Pending

Filed – 4/25/2013

BOE's Counsel

Brian Wesley

BOE Attorney

W. Gregory Day

Plaintiff's Counsel

Issue(s): Respondent supplies and services catering trucks, and has refused to produce documents and records in response to an administrative subpoena concerning those catering trucks that was issued pursuant to [Revenue and Taxation Code section 6074](#) and [Government Code sections 15613, 15617 and 15618](#). BOE served an administrative subpoena duces tecum on the Respondents on April three (3) administrative subpoenas duces tecum on the Respondents on May 16, 2012. Respondents have indicated that the issuance of the subpoena to each respondent was legally improper and violated the due process rights of the respondent.

Audit/Tax Period: None

Amount: \$0.00

Status: BOE serve an administrative subpoena duces tecum on the Respondents on April 25, 2013, with a compliance date of May 28, 2013.

WALNUT, CITY OF v. Department of Finance, et al.

Sacramento Superior Court Case No. 34-2012-80001344

Plaintiff's Counsel

Michael Montgomery
City of Walnut Attorney

Filed –12/19/12

BOE's Counsel

Ryan Marcroft
BOE Attorney
John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a “remedial defendant” in this case. BOE filed its response on January 22, 2013.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

Los Angeles Superior Court Case No. CA000499

Court of Appeal, Second Appellate District, Case No. B113661

Plaintiff's Counsel

James M. Gansinger
Gansinger, Hinshaw

Filed – 06/20/78

BOE's Counsel

Diane Spencer-Shaw
BOE Attorney
Sharon Brady Silva

Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee ([Revenue and Taxation Code sections 10753 and 10758](#)) and use tax imposed.

Audit/Tax Period: None

Amount: \$1,492.00

Status: On July 21, 2010, the California Supreme Court denied Woosley's Petition for Review. As no further appeals may be taken from the appellate decision, the case will be remanded to the trial court to make further determinations in accordance with the appellate court's decision. Remittitur issued August 3, 2010. Woosley filed his brief on August 22, 2011. The hearing was held on November 15, 2011, and was continued to conclude arguments regarding the first attorney's fee issue. A hearing is scheduled to begin on January 23, 2012 concerning the second and third attorneys' fees issues. Arguments as to the first, second, and third attorney's fees issues were continued to March 1, 2012, and completed. Hearing scheduled for June 26, 2012 was

removed from court calendar. Hearing date scheduled on September 7, 2012 was cancelled until decision regarding assignment of judge is resolved. On October 11, 2012, the court issued a Minute Order to reassign the case to a new judge. On October 25, 2012, Plaintiff filed a petition challenging the reassignment. The State's opposition was filed on November 30, 2012, and the hearing on the issue will take place on December 13, 2012. The superior court vacated its decision on February 5, 2013, and set a further hearing on February 13, 2013. On February 14, 2013, the superior court assigned the matter back to the judge who conducted the hearing in 2011 and 2012.

YABSLEY, RICHARD A. v. CINGULAR WIRELESS LLC

(Amicus Curiae Brief)

California Supreme Court, Case No. S176146

Court of Appeal, Second Appellate District, Case No. B198827

Filed – 12/15/08

BOE's Counsel

None

BOE Attorney

John Waid

Issue(s): This is an Unfair Competition Law case in which plaintiff alleges that the retailer illegally collected sales tax reimbursement based on the full value of the cellular phone purchased rather than the bundled price. The trial court found that [Regulation 1585](#), which required that the sales tax be imposed on the regular price, provided a safe harbor from the customer's unfair competition and false advertising claims. The appeal court affirmed on that basis and also held that [Cal. Const., art. XII, § 32](#), and [Rev. & Tax. Code, § 6932](#), barred the action because the customer's sole remedy for the return of excess sales tax collected was under [Rev. & Tax. Code 6901.5](#). The court also found that the plaintiff lacked standing to maintain his claims because he cited no independently actionable violations, did not show that he was entitled to reimbursement, and could not prove causation. The receipt gave the customer notice of the amount of the tax and, under Civ. Code, § 1555.1 created a rebuttable presumption that he agreed to pay it. BOE filed an amicus brief to support the taxpayer's position that: 1) BOE consumer remedy statutes cannot be used to adjudicate tax disputes; and 2) BOE regulations provided a safe harbor from allegations of illegal activities under the unfair competition law.

Audit/Tax Period: None

Amount: Unspecified

Status: The Court of Appeal issued its opinion on August 19, 2009, and published as 176 Cal.App.4th 1156, agreeing with the BOE's position. On November 19, 2009, the taxpayer petitioned the Supreme Court for review. The Court deferred further action pending consideration and disposition of a related issue in *Loeffler v. Target Corp.*, California Supreme Court Case No. S173972 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the Court. The Court vacated the Court of Appeal's opinion. Oral argument in Loeffler has not yet been set.

SALES & USE TAX
CLOSED CASES
LITIGATION ROSTER
APRIL 2013

TRIANGLE FOODS, INC. II

Cynthia Bridges, et al. v. Triangle Foods, Inc.

(Petition to Enforce Administrative Subpoena Duces Tecum)

Los Angeles Superior Court Case No. BS132161

Plaintiff's Counsel

Philip C. Greenwald

Law Offices of Philip C. Greenwald

Filed – 9/27/2012

BOE's Counsel

Brian Wesley

BOE Attorney

W. Gregory Day

Issue(s): Respondent supplies and services catering trucks, and has refused to produce documents and records in response to an administrative subpoena concerning those catering trucks that was issued pursuant to [Revenue and Taxation Code section 6074](#) and [Government Code sections 15613, 15617 and 15618](#). BOE served three (3) administrative subpoenas duces tecum on the Respondents on May 16, 2012. Respondents have indicated that the issuance of the subpoena to each respondent was legally improper and violated the due process rights of the respondent.

Audit/Tax Period: None

Amount: \$0.00

Disposition: Based on the Court's February 22, 2013 ruling, BOE will reissue a revised subpoena. Case closed.

WATSONVILLE, CITY OF v. Ana J. Matosantos

Sacramento Superior Court Case No. 34-2012-80001414

Plaintiff's Counsel

Lynn Hutchins

Goldfarb & Lipman LLP

Filed –02/20/13

BOE's Counsel

Jeff Rich

BOE Attorney

John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Disposition: On April 3, 2013, the attorneys for Plaintiffs City of Watsonville, et al., filed a Request for Dismissal. The Court entered the dismissal on April 10, 2013. Case closed.

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